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7	BEFORE 3	ГНЕ
8	RESPIRATORY CARE BOARD DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CAL	JIFORNIA
10	In the Matter of the Petition to Revoke Probation	Case No.
11	Against:	
12	MARK ALLEN LIVENGOOD 3935 N. Ricewood	PETITION TO REVOKE PROBATION
13	Fresno, CA 93705	
14	RCP License 23657	
15	Respondent.	
16		
17	Complainant alleges:	
18	<u>PARTIES</u>	
19		nt) brings this Petition to Revoke Probation
20	solely in her official capacity as the Executive Officer of the Respiratory Care Board of	
21	California, Department of Consumer Affairs.	
22	2. On or about June 23, 2004, the Respiratory Care Board issued Respiratory	
23	Care Practitioner License Number 23657 to Mark Allen Livengood (Respondent). Said License	
24	was in effect at all times relevant to the charges brought herein and will expire on January 31,	
25	2009, unless renewed.	
26	3. In a disciplinary action entitled "In the Matter of the Accusation Against	
27	Mark Allen Livengood," Case No. R-2056, the Resp	piratory Care Board issued a decision
28	effective May 14, 2007, in which Respondent's Lice	nse was revoked. However, the revocation

1	was stayed and Respondent was placed on probation for a period of three (3) years with certain		
2	terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by		
3	reference.		
4	<u>JURISDICTION</u>		
5	4. This Petition to Revoke Probation is brought before the Respiratory Care		
6	Board (Board), Department of Consumer Affairs, under the authority of the following laws. Al		
7	section references are to the Business and Professions Code unless otherwise indicated.		
8	5. Section 3710 of the Code states: "The Respiratory Care Board of California,		
9	hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the		
10	Respiratory Care Practice Act]."		
11	6. Section 3718 of the Code states: "The board shall issue, deny, suspend,		
12	and revoke licenses to practice respiratory care as provided in this chapter."		
13	<u>COST RECOVERY</u>		
14	7. Section 3753.5, subdivision (a) of the Code states:		
15	"In any order issued in resolution of a disciplinary proceeding before the board,		
16	the board or the administrative law judge may direct any practitioner or applicant found to have		
17	committed a violation or violations of law to pay to the board a sum not to exceed the costs of the		
18	investigation and prosecution of the case."		
19	8. Section 3753.7 of the Code states:		
20	"For purposes of the Respiratory Care Practice Act, costs of prosecution shall		
21	include attorney general or other prosecuting attorney fees, expert witness fees, and other		
22	administrative, filing, and service fees."		
23	9. Section 3753.1 of the Code states:		
24	"(a) An administrative disciplinary decision imposing terms of probation may		
25	include, among other things, a requirement that the licensee-probationer pay the monetary costs		
26	associated with monitoring the probation. "		
27	///		
28	///		

1 FIRST CAUSE TO REVOKE PROBATION 2 10. The Decision and Order in Case No. R-2056, Probation Condition 2 states: 3 "Respondent, at his expense, shall participate in random testing, including, but not limited to, biological fluid testing..." 4 5 11. Respondent is in violation of Probation Condition 2 because on September 18, 2008, he did not telephone Compass Vision Inc. (CVI), which administers the Board's 6 7 random testing program. He was selected for random testing on that date and did not appear for 8 testing. 9 SECOND CAUSE TO REVOKE PROBATION 12. 10 The Decision and Order in Case No. R-2056, Probation Condition 5 states: 11 "Respondent shall file quarterly reports of compliance 12 under penalty of perjury, on forms to be provided... Failure 13 to submit complete and timely reports shall constitute a 14 violation of probation." 15 13. Respondent is in violation of Probation Condition 5 because he failed to 16 submit quarterly reports of compliance for three reporting periods: July 1, 2007 - September 30, 17 2007; April 1, 2008 - June 30, 2008; and July 1, 2008 - September 30, 2008. 18 THIRD CAUSE TO REVOKE PROBATION 19 14. The Decision and Order in Case No. R-2056, Probation Condition 6 states: 20 "Respondent shall comply with requirements of the Board 21 appointed probation monitoring program..." 22 15. Respondent is required to telephone Compass Vision Inc. (CVI) on a daily 23 basis to determine if he has been selected for random drug and alcohol testing. Respondent's 24 probation is subject to revocation because he failed to telephone CVI on the following dates: 25 2007: August 11; September 23; October 14, 28; November 13 and 17; December 15. 26 2008: January 10, 24, 27; February 1; March 26; April 2, 21, 26, 27; June 10, 11, 12, 13, 15, 18, 27 20, 22, 30, July 1, 6, 12, 13, 15, through and including the date of filing this Petition. 28 ///

1	FOURTH CAUSE TO REVOKE PROBATION		
2	(Probation Monitoring Costs)		
3	16. The Decision and Order in Case No. R-2056, Probation Condition 7 states:		
4	"All costs incurred for probation monitoring during the entire probation shall be		
5	paid by the Respondent."		
6	17. Respondent's probation is subject to revocation because he has failed to		
7	pay monthly probation costs from May 2008 until the present date.		
8	FIFTH CAUSE TO REVOKE PROBATION		
9	(Failure to notify Board of change of employment)		
10	18. The Decision and Order in Case No. R-2056, Probation Condition 10		
11	states:		
12	"Respondent shall notify the Board, and appointed probation monitor,		
13	in writing, of any and all changes of employment, location, and address		
14	within 14 days of such change. This includes, but is not limited to,		
15	applying for employment, termination or resignation from employment,		
16	change in employment status, change in supervisors, administrators or directors."		
17	19. Respondent's probation is subject to revocation because in June 2008, he		
18	informed his probation monitor in a telephone call that he was resigning from his employment as		
19	a respiratory care practitioner due to health reasons but he failed to inform the Board in writing.		
20	<u>PRAYER</u>		
21	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
22	alleged, and that following the hearing, the Respiratory Care Board issue a decision:		
23	1. Revoking the probation that was granted by the Respiratory Care Board of		
24	California in Case No. R-2056 and imposing the disciplinary order that was stayed thereby		
25	revoking RCP License No. 23657 issued to Mark Allen Livengood;		
26	2. Revoking or suspending RCP License No. 23657, issued to Mark Allen		
27	Livengood;		
28			

1	3. Ordering Mark Allen Livengood to pay the Respiratory Care Board the	
2	costs of the investigation and enforcement of this case, and if probation is continued or extended,	
3	the costs of probation monitoring;	
4	4. Taking such other and further action as deemed necessary and proper.	
5		
6	DATED: November 17, 2008	
7		
8	Original signed by Liane Zimmerman for:	
9	Original signed by Liane Zimmerman for: STEPHANIE NUNEZ Executive Officer	
10	Respiratory Care Board of California Department of Consumer Affairs	
11	State of California Complainant	
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